IN THE HIGH COURT OF JUDICATURE AT BOMBAY

CIVIL APPELLATE JURISDICTION

WRIT PETITION NO. 7591 OF 2002

Rangrao Bandu Patil (Kale).... ..... Petitioner.

Versus

Balu Ramchandra Valunj & Anr..... Respondents.

Mr. R.S.Apte with Mr. S.S.Pandit
for the Petitioner.

Mr. R.S.Kate for Respondent Nos.1 and 2.

CORAM : S. C.DHARMADHIKARI, J.

DATED : 20TH DECEMBER, 2004.

P.C.:

The Order below Exh. 47 in Regular Civil Suit No.163 of 1988 is challenged by the Petitioner / Defendant in this petition under Article 227 of the Constitution of India. It appears that this order was challenged in a revision application which was entertained by this Court being Civil Revision Application No.967 of 1994. This Civil Revision Application was admitted by this Court and stay of further proceedings in the above Regular Civil Suit came to be granted.

2. After amendment to the Civil Procedure Code with effect from 1st July, 2002, this Court held that this Civil Revision Application is not maintainable. Thereupon, the Petitioner filed the present petition.

3. When this matter was placed before me on earlier occasion, I invited the attention of learned Counsel appearing for parties to the fact that the impugned order is dated 15th September, 1994. The Civil Revision Application was entertained by this Court on 29th November, 1994. As a result of the interim stay granted in the Civil Revision Application, hearing of Regular Civil Suit has been stayed for last more than 10 years. The suit is filed in the year 1988.

4. Although an inter locutory order is impugned in the present petition, in my view, considering the fact that proceedings in trial Court are stayed for last more than 10 years, no useful purpose will be served by going into the controversy raised in the petition. I am of the view that in the peculiar facts and circumstances of this case, interest of justice would be served, if, sale deeds in question, namely, Sale Deeds dated 3rd September, 1970 and 25th May, 1988 are referred by the trial Court for examination by a finger print / handwriting expert. From a reading of

the impugned order itself, it is clear that Shankar Rama Patil is party to both Sale Deeds. It is his thumb impression which is in dispute. The alternate submission of the learned Counsel that the person concerned should be summoned by the Court and his thumb impression be recorded cannot be entertained now because admittedly Shankar Rama Patil has expired during the course of the proceedings.

5. In my view, in the peculiar facts and circumstances of this case, the Petition can be disposed of by this Court by directing the Judge, Junior Division, Patan to refer the Sale Deeds to the handwriting / finger print expert and the said expert be directed to submit his report within a period of six weeks from the date the documents are referred to him. The ad-interim order granted by this Court stands vacated subject to this direction. The trial Court upon receipt of the handwriting / finger print expert's report to proceed with the matter and endeavour to dispose of the suit by 31st August, 2005.

6. It will be open for the Court also to forward to the handwriting / finger print expert an affidavit which has been filed by deceased Shankar Rama Patil in Court to enable him to give his opinion.

7. Writ petition is disposed of with the above directions.

8. All contentions on merits are expressly kept open.

Sd/-

(S. C. DHARMADHIKARI,J.)